

Office of the Independent Police Auditor

Monthly Report

October 2012



November 13, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period October 1, 2012 through October 31, 2012.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0

Types of Cases Filed

Citizen Complaints	7
Administrative Investigations	0
Comments of Non-Complaint	2
TOTAL	9

Citizen Complaints Received per Department

OIPA	2
BART Police Department	5
TOTAL	7

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed**

During the month of October 2012, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed ⁷
1 (OIPA 12-61) (IA2012-084)	Unnecessary or Excessive Use of Force; Racial Profiling	OIPA initiated an investigation	34
2 (OIPA 12-62) (IA2012-089)*	Conduct Unbecoming an Officer	OIPA notified BART PD, which initiated an investigation	20

*The BART PD later reclassified this matter as a Comment of Non-Complaint.

During the month of October 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-091)	Conduct Unbecoming an Officer	BART PD initiated an investigation	18
2 (IA2012-090)	Force	BART PD initiated an investigation	18
3 (IA2012-086)	Force; Bias-Based Policing	BART PD initiated an investigation	22
4 (IA2012-085)	Performance of Duty	BART PD initiated an investigation	32
5 (IA2012-087)*	Bias-Based Policing	BART PD initiated an investigation	47

*This complaint was received toward the end of the previous reporting period (September). It was not added to the Internal Affairs case database in time for that report, however, so it has been included here.

During the month of October 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-088)	Courtesy	BART PD initiated an investigation	19
2 (IA2012-083)	Performance of Duty; Courtesy	BART PD initiated an investigation	33

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of October 2012, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 12-61)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Unnecessary or Excessive Force • Racial Profiling 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Unnecessary or Excessive Force – N/A (Officer not BART PD officer) • Racial Profiling – N/A (Officer not BART PD officer) 	34	14

During the month of October 2012, 12 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition ⁸	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-023)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	249	221
2 (IA2012-013)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Procedure/Detention <u>Police Officer #2</u> <ul style="list-style-type: none"> • Procedure/Detention 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Procedure/Detention – Exonerated <u>Police Officer #2</u> <ul style="list-style-type: none"> • Procedure/Detention – Exonerated 	264	236
3 (IA2012-016)	<u>Police Officer #1 (Identity Unknown)</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1 (Identity Unknown)</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded 	274	249
4 (IA2012-006)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	279	245
5 (IA2012-004)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Detention/Search <u>Police Officer #2</u> <ul style="list-style-type: none"> • Detention/Search 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Detention/Search – Exonerated <u>Police Officer #2</u> <ul style="list-style-type: none"> • Detention/Search – Exonerated 	303	282

<p>6 (IA2012-001)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Illegal/Improper Search/Seizure • Courtesy/Conduct Unbecoming an Officer • Exceeding Peace Officer Powers <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Exceeding Peace Officer Powers 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Illegal/Improper Search/Seizure – Exonerated • Courtesy/Conduct Unbecoming an Officer – Unfounded • Exceeding Peace Officer Powers – Unfounded <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded • Exceeding Peace Officer Powers – Unfounded 	<p>314</p>	<p>275</p>
<p>7 (IA2012-010)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Use of Force <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Use of Force 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Use of Force – Exonerated <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Use of Force – Exonerated 	<p>320</p>	<p>294</p>
<p>8 (IA2011-083)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Discourtesy 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Discourtesy – Not Sustained 	<p>337</p>	<p>315</p>
<p>9 (IA2011-068)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated 	<p>376</p>	<p>331</p>

	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated 		
	<u>Police Officer #3</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	<u>Police Officer #3</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated 		
	<u>Police Officer #4</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	<u>Police Officer #4</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated 		
	<u>Police Officer #5</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	<u>Police Officer #5</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated 		
	<u>Police Officer #6 (Retired)</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	<u>Police Officer #6 (Retired)</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated 		
10 (IA2011-085)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded • Courtesy – Not Sustained 	376	350

11 (IA2012-009)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention • Excessive Force • Use of Force Reporting • Unprofessional Conduct/Conduct Unbecoming an Officer (Count 1) • Conduct Unbecoming an Officer (Count 2) • Handcuffing Policy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention – Unfounded • Excessive Force – Not Sustained • Use of Force Reporting – Not Sustained • Unprofessional Conduct/Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 2) – Unfounded • Handcuffing Policy – Not Sustained 	272	258
	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention • Excessive Force • Use of Force Reporting • Conduct Unbecoming an Officer • Handcuffing Policy 	<u>Police Officer #2</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention – Unfounded • Excessive Force – Not Sustained • Use of Force Reporting – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Handcuffing Policy – Not Sustained 		
	<u>Police Officer #3</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention 	<u>Police Officer #3</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention – Unfounded 		
	<u>Police Officer #4</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention 	<u>Police Officer #4</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention – Unfounded 		

	<u>Police Officer #5</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention • Complaint Acceptance 	<u>Police Officer #5</u> <ul style="list-style-type: none"> • Unlawful Arrest/Detention – Unfounded • Complaint Acceptance – Sustained 		
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During the month of October 2012, 2 Administrative Investigations were concluded by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-011)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty • Supervision <u>Police Officer #2</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty <u>Police Officer #3</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty <u>Police Officer #4</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty <u>Police Officer #5</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty – Unfounded • Supervision – Sustained <u>Police Officer #2</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty – Unfounded <u>Police Officer #3</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty – Unfounded <u>Police Officer #4</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty – Unfounded <u>Police Officer #5</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty – Unfounded 	271	232

	<u>Police Officer #6</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty 	<u>Police Officer #6</u> <ul style="list-style-type: none"> • Consumption of Alcohol While On-Duty – Unfounded 		
2 (IA2012-052)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Discrimination/ Harassment • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Discrimination/ Harassment – Sustained • Conduct Unbecoming an Officer – Sustained • Courtesy – Sustained 	141	127

During the month of October 2012, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-088)	Courtesy	Supervisory Referral ⁹	19	6
2 (IA2012-089)	Conduct Unbecoming an Officer	Supervisory Referral	20	3
3 (IA2012-083)	Performance of Duty; Courtesy	Supervisory Referral	33	11
4 (IA2012-082)	Performance of Duty (Civilian)	Supervisory Referral	46	10

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	1
Investigations Being Monitored	11
Investigations Reviewed During Current Month	23*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as "Comments of Non-Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁸ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

⁹ In defining a "Supervisory Referral," the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.